IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.618 OF 2004

IN

COMPANY PETITION NO.266 OF 2003

...

M/s.Peerless Construction
Pvt.Ltd. ...Appellant

v/s.

1(a) Smt.Shanta Krishna Gaikwad
and others ...Respondents

...

Mr.S.R.Mishra for the Appellant.

Mr.V.J.Lullia for the Respondents.

...

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 30TH AUGUST, 2007

P.C.:

1. Though the Appeal is not on board for final hearing, by consent of parties the Appeal is taken on board for final hearing.

2. Heard the learned Counsel for both sides. The company petition for winding up of the Petitioner/company has been admitted by the learned single Judge of this court by the order impugned in this petition, without assigning any reason. That the Respondent/company did not appear, is not enough for the learned single Judge of this court not to assign any reason for admitting the Company Petition for winding up of the company. It goes without saying that the admission of the petition for winding up has drastic consequence on the company for whose winding up the petition is filed. In our opinion, therefore, the learned single Judge was not justified

in admitting the petition without assigning any reason for doing so, and therefore, in our opinion the order admitting the petition is liable to be set aside. However, the fact remains that the Respondent remained absent before the learned single Judge, as a consequence of which the petition was admitted and therefore the petition had to incur expenses for advertising the admission of the petition.

3. Taking overall view of the matter, therefore, in our opinion, following order would meet the ends of justice:

O R D E R

(i) The order dated 18-6-2004 passed in Company Petition No.266 of 2003 is set aside. That Company Petition is remitted back to the learned Company Judge, to be heard for admission in accordance with law;

(ii) The amount of Rs.10,00,000/- (Rupees Ten Lakh only) which is deposited by the Appellant in this Appeal shall be held to the credit of company petition No.266 of 2003. While passing the order on

the admission of the petition, the learned Company Judge shall be free to pass an order regarding disposal of that amount.

(iii) The Appellant shall also pay Rs.15,000/- as and by way of costs of this Appeal to the Respondents within four weeks from today. Appeal disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.3138 OF 2004

IN

APPEAL NO.618 OF 2004

IN

COMPANY PETITION NO.266 OF 2003

...

M/s.Peerless Construction
Pvt.Ltd. ...Appellant

v/s.

1(a) Smt.Shanta Krishna Gaikwad
and others ...Respondents

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CORAM: D.K.DESHMUKH &
J.H.BHATIA, JJ.
DATED: 30TH AUGUST, 2007

P.C.:

In view of the order passed in Appeal No.618 of 2004, this motion does not survive for consideration. Disposed of as such.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)